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In Pro per

**STATE OF CALIFORNIA**

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	
For the High Desert Power Project [HDPP]	)	
	)	
_____	)	

**COMMENTS  
OF GARY A LEDFORD - PUBLIC INTERVENOR  
ON  
REVISED PRESIDING MEMBER'S  
PROPOSED DECISION  
FOR THE  
HIGH DESERT POWER PROJECT**

Respectfully submitted:  
April 13, 2000~~April 11, 2000~~

\_\_\_\_\_  
GARY A. LEDFORD  
PARTY IN INTERVENTION  
IN PRO PER

# **COMMENTS ON REVISED PRESIDING MEMBERS PROPOSED DECISION**

## **I. INTRODUCTION**

The comments made herein, on the Revised Presiding Members Proposed Decision [RPMPD] focus on the “revisions.” While the vast majority of Intervenor's PMPD "comments" are ignored in the RPMPD, several of his positions are included in the RPMPD, and for that he is grateful.

New evidence presented in the re-opened hearings demonstrates conclusively that the consequences of certifying HDPP using “wet cooling” raises the corner-stone question of plant reliability and the potential for plant failure. [RT 2/18/2000 Buell pg.193; Ex 146]

By contrast, the evidence on dry cooling presented by intervenor and acknowledged by Applicant and Staff demonstrated that a new Gas Turbine Generating facility, rated at 500 MW, is operational in Boulder City, Nevada. Further, the Applicant did not present convincing evidence that the plant would not be economical in the high desert with Dry Cooling implemented.

Intervenor will show very specific errors that have been made in the RPMPD. While the RPMPD recognizes some of the issues raised by this Intervenor, the record in many cases simply does not support the (informative nature of the document) or the "Findings of Fact." Intervenor's comments are directed to some of these instances.

Intervenor believes the Committee has used the process to pick out of the evidentiary record bits and pieces to support it's pre-determined position and is not a "neutral" trier of fact evaluating the entire record. The lack of neutrality is one of the reasons neither the PMPD nor the RPMPD is the functional equivalent of a CEQA process. The new evidence is conclusive, that the RPMPD, as it relates to the use of water, is not the functional equivalent of CEQA. .

From the beginning, this Intervenor's primary focus is on the issue of Water and the Regional Significance of the Overdraft. Clearly, the critical water issue facing the Energy Commission in the HDPP is to resolve the question; can the 100% consumptive use of SWP water be allowed without negatively impacting the environment and the court ordered solution which was adopted to avoid further environmental deterioration and cure the Regional Overdraft? No one disagrees that the area selected by HDPP suffers from severe overdrafting of

water basins. Municipal development over the past 40 years has exacerbated the problem.<sup>1</sup> Intervenor hastens to remind the Energy Commission that the State Department of Water Resources (SDWR), in a companion case, where the City of Victorville plans to purchase treated effluent for use at George, has indefinitely put hearings on hold. The SDWR is waiting until the Supreme Court Rules as to the serious nature of the overdraft and the outcome on parties' property rights.

Intervenor provides the following comments to the Revised Presiding Member's Proposed Decision, based on the evidence, testimony and public comments at the re-opened hearings. Intervenor's previous filed comments on the PMPD and all former briefs are included herein as if set forth in full.

## **II. UNMITIGATED ENVIRONMENTAL IMPACTS AT PROJECT SITE REQUIRE THAT THE PROJECT NOT BE CERTIFIED**

It should be noted that the US Air Force has been represented at each of the HDPP hearings. The Air Force representative, who would not agree to testify, stated to participants at the hearings that the construction of HDPP prior to the environmental clean up was a huge mistake.

Footnote 29 from the RPMPD<sup>2</sup> demonstrates that the Energy Commission should not certify this Power Project! The record shows that the environmental contamination of the project site is not cleaned up. The clean up of existing contaminated water in the upper aquifer may be impaired by the construction and operation of this project.

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<sup>1</sup> Exhibit 112 - MWA Brief to the California Supreme Court - Rapid urban development in the 1980's had exacerbated the problem by dramatically increasing the demand on the already overdrafted system.. .By 1990 the cumulative overdraft on the Basin exceeded one million acre feet.

<sup>2</sup> Footnote 29 RPMPD  
We note, however, that in its February 23, 2000 comments on the federal draft EIS, US EPA expressed concerns "...regarding consistency of the proposed project with ongoing remedial cleanup of contaminated groundwater at the former George AFB." (Comments, p. 2.) USEPA basically recommends that the Air Force examine any groundwater plume under the proposed site prior to plant design and construction, and that the federal agencies establish a firm schedule and funding commitment to achieve this task as part of the final EIS. (*Id.*)

The CEC ignores the testimony of Mr. Andy Welch: [RT 2/18/2000] raising this serious environmental issue. Instead the RPMPD relegates the clean-up to a footnote.

"We did not look to put wells on our site or on the area immediately around it, on the Airport site, because we were informed by the United States Air Force Base Conversion Agency that they had contamination on the perched aquifer and they would not permit anyone to drill through those, that perched aquifer, at the risk of spreading that contamination to the lower. So we never considered that -- well, after talking to them we never considered it as a possibility."

Intervenor restates his position of the CEQA deficiencies as discussed in comments to the PMPD as though fully set forth herein and reviews the new issues not set forth in the previous PMPD.

### **III. NON-COMPLIANCE WITH LAWS, ORDINANCES, REGULATIONS AND STANDARDS (LORS) INDICATE THAT THE HDPP SHOULD NOT BE CERTIFIED**

Unfortunately, the HDPP record shows that the political lobbies of these large energy companies are so powerful that they can buy elections and affect influence in the highest public offices to ignore the Laws, Ordinances, Regulations and Standards of this Great State.

**1. THE WILL SERVE LETTER:** Intervenor, an experienced Real Estate developer, has never heard of a concept that a "Will Serve Letter" will come after project approval. The notion is preposterous; not even a draft of what it will look like is before the CEC. In fact the condition that is supposed to protect the Public is buried in Condition Number Three, which states a "Will Serve Letter" will be provided prior to commercial operation. The question continues to beg itself, how do you start construction of a \$350,000,000 Power Project when you do not have a "Reliable" source of water?

This solution defies common sense. Imagine a Real Estate Developer coming to a community and saying that he was going to build 8,000 homes. How could he get project approval without a "Will Serve Letter"? - He can't!

Mr. Ledford: ". .so this process of a Water Storage Agreement, which is an integral part of this whole "WILL SERVE" process, hasn't even started yet, is that a correct statement? There is no Official Application for approval of a water storage agreement to the Water Master as of tonight?"

Acting General Manager of MWA - Mr. Caouette [for MWA]: "No"<sup>3</sup>

Intervenor's position is that the alleged Aquifer Storage Agreement, itself deficient because it does not have the requisite Storage Agreement from Watermaster, does not rise to the level of a "Will Serve Letter", and therefore does not comply with the LORS that govern all other development projects in this state.

In this case the Victor Valley Water District, (VVWD), the very Water District that proposes to someday in the future provide a "Will Serve" letter simply has not provided such a commitment; nor can it. Because the VVWD would be required to do its own CEQA review of a "Project" that everyone "Now" admits will be used for "Other" uses besides the "Power Project".

**2. MWA ACT and PHYSICAL SOLUTION REQUIRE AN EQUITABLE TREATMENT OF ALL PARTIES:** The Mojave Water Agency [MWA] argues before the California Supreme Court that the Physical Solution is "equitable" because all parties will share in the cost of restoring the basins to balance. While referring to the MWA case, the Committee wrongfully omits information from the RPMPD that demonstrates why the HDPP water plan is inequitable to the "Producers" globally and the farmers specifically.

Overdrafted basins, based on what the judgement was supposed to do was to provide an equitable means of purchasing imported water<sup>4</sup> and creating "Return Flows"<sup>5</sup> The purpose of the Physical solution was to cure the overdraft. The "Cure" is the importation of SWP water, spread in the basins, where at an average of 50% consumptive use the "Return flows" can be used by the other parties to the judgement.<sup>6</sup>

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<sup>3</sup> Hearing Transcript October 7<sup>th</sup> 1999, page[s] 343 - 344

<sup>4</sup> MWA Brief to Supreme Court -The trial court Judgment provides an equitable mechanism, a "Physical Solution," for allocating pumping rights and financing the purchase of imported water supplies essential to the ongoing enjoyment of all classifications of water rights in the Basin.

<sup>5</sup> MWA Brief to Supreme Court Pg. 48 - . . . parties who import non-native supplemental water into a watershed and allow it to recharge a groundwater supply have a prior and paramount right against all other water right claimants to recapture and use the non-native water, including the "return flows" following initial use of the foreign water. (14 Ca.3d at 257-262.) **The Physical Solution provides for the importation and distribution of supplemental water in order to recharge the Mojave System. {emphasis added}**

<sup>6</sup> MWA Brief to Supreme Court Pg. 48 - At its heart, it allows each party to pump as much water as needed. Above a **certain level, each** party is required to pay a Replacement Water Assessment. This money is used to **acquire imported water which precludes continuing overdrafting**

The problem for everyone in the High Desert area are the overdrafted water basins. The issue has been litigated resulting in a judgment seeking to provide an equitable means of purchasing imported water and creating “return flows.” The court-imposed “Cure” or “Physical Solution” is the importation of SWP water, spread in the basins, where at an average of 50% consumptive use, the “return flows” can be used by other parties to the judgment. Even with the physical solution in place, the RPMPD states that no water is being purchased from the MWA to effect the cure. Based on arguments now before the California Supreme Court, HDPP is mandated under the Physical Solution, to share in the cost of restoring the overdrafted basins.

The overriding policy of the State of California is to maximize the beneficial uses of its scarce water resources. This policy is expressed in Article X, Section 2, of the California Constitution, which states in pertinent part:

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare....<sup>7</sup>

For some reason the CEC fails to understand or elects to ignore the plain meaning of this section of the California Constitution. As presented to the California Supreme Court, the "Curing the overdraft" is to be accomplished with imported water and that "Return Flows" is critical to that cure. The premise in the RPMPD that the VVWD and HDPP can buy SWP and directly consume the water that is owned and paid for by all of the taxpayers of this community circumvents the judgment and is absurd. Unlike every other producer, the only cost the HDPP is going to pay for water is the actual "delivery" cost plus the MWA markup.

Before the Energy Commission is overwhelming evidence [Ex. 174] that based on the current entitlement to SWP water there is not enough water to cure the overdraft in all basins. Ramp downs will continue, and at some point the fully interruptible entitlement that is allocated to this project will not be available for this project and the project will be forced to shut down or

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<sup>7</sup>

MWA Brief to Supreme Court Pg. 48 -

go to Dry Cooling. [Buell Ex. 146A] And, left to their own solutions the municipalities will continue to ignore the problem .<sup>8</sup>

Moreover VVWD, as the evidence in this case has clearly demonstrated, is Pumping their wells dry. Regardless of what the adjudication says, their wells are going "Dry". The water available to the Region in the form of "Free" water is in the "River" and the VVWD wells do not have ready access to the River.<sup>9</sup> Yet the Water district gets a share of the Free Production Allowance.

The issues of Water in this State have never been so hotly contested. As the MWA argues before the California Supreme Court that the ". . . Constitutional provision has been interpreted to mean that: **"Public interest requires that there be the greatest number of beneficial users which the supply can yield."** It should be clear that in this critical and severely overdrafted water basin the 100% consumptive use of the life blood of this community, a property right of each of its citizens, not one cent of which has every been paid for by the predecessors in interest of the HDPP, cannot be unfairly allocated or used in this manner.

The applicant's proposal favors one city and one water district to the detriment of all other water producers involved. Applicant's proposal is contrary to the Act that empowers the MWA, and subject to the outcome of the current California Supreme Court review.

Intervenor re-emphasizes to the Energy Commission that the State Department of Water Resources in a companion case, for the City of Victorville to purchase treated effluent for use at George has indefinitely put hearing on hold until the Supreme Court Rules as to the serious nature of the overdraft and the outcome on parties property rights.

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<sup>8</sup> Exhibit 112 - MWA Brief to the California Supreme Court - Rapid urban development in the 1980's had exacerbated the problem by dramatically increasing the demand on the already overdrafted system.. . By 1990 the cumulative overdraft on the Basin exceeded one million acre feet.

<sup>9</sup> Randy Hill: 2/18/2000: page 175

Q Are any of the wells that are within your district naturally recharged by the flood plane aquifer?

A By the Mojave River?

Q Correct.

A My understanding is that there is some limited interaction between the Mojave River and the regional basin, but it's not a very strong connection. The bulk of my wells do not seem to be obtaining the benefit of recharge at Rock Springs.

#### **IV. THE PUBLIC, NOT THE APPLICANT BEARS THE “RISK” OF PROJECT “RELIABILITY”**

The reliability of HDPP is one of the most compelling issues from the standpoint of CEQA and Energy Commission approval. **"It's pretty much take your chances."** The record is replete that Dry Cooling is the environmentally superior alternative. The Energy Commission, however, is reluctant to mandate dry cooling because in the deregulated environment the "risk" is being assumed by the "applicant".

Intervenor respectfully disagrees. In fact the "risk" of a project is born by the end users. Energy consumers and the public must rely on the Energy Commission to make decisions that provide "reliable" energy. The record in this case shows the HDPP "has a high probability of the plant failing in the future" [Exhibit 146]. As Mr. Buell testified while the plant conditions could be modified and Dry Cooling retrofitted if there is no water, how long would that take?

The “risks” creating “unreliability” cannot have been made more clear than Hearing Officer Valkosky’s question and the Acting Manager of the MWA’s response.

HEARING OFFICER VALKOSKY: "Okay, so again, just to relate it to this particular project, the City of Victorville, on behalf of the applicant, will be coming back every year, and **it's pretty much take your chances** depending on the availability of water?"

The Acting Manager of MWA Mr. Cauoette: "That's correct"<sup>10</sup>

The logical conclusion is the HDPP cannot operate reliably. The project proposes wet cooling. Wet cooling requires a reliable supply of water. There is no reliable supply of water. The Energy Commission is proposing certification of a plant whose technology is at best “maybe” going to provide energy. Thus, the use of Water for cooling at this site will not give the Energy Commission a reliable plant for its full-expected life.

#### **V. NON-COMPLIANCE WITH CEQA**

Intervenor has consistently stated that the PMPD is not the functional equivalent of CEQA. Intervenor repeats he is not alone in that thought and more and more members of the Public are reasoning that the CEC cannot conduct unbiased and independent environmental review of a project when it is the CEC's charge to approve it. In a recent survey by the Energy

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<sup>10</sup> Hearing Transcript October 7<sup>th</sup> 1999, page 336 lines 8 - 14



Commission, distributed by the Public Advisors Office, 100% of the responding Intervenor **totally disagree** with staff and in this case the "Committee" that "CEC is functionally equivalent to CEQA.

One Intervenor stated quite succinctly "It's the fox guarding the hen house". The Public Intervenor and general participants are totally ignored and their comments made in public meetings or by way of letters are rejected by the Energy Commission. In this case for example, only late in the case did the staff admit to this intervenor that they did not understand his issues until after the Brief on the original PMPD.

## **VI. SUMMARY OF REASONS WHY HDPP CANNOT BE CERTIFIED AT THIS TIME:**

The High Desert Power Project cannot be certified at this time because:

- A. There is a serious contaminated water plume under the site, the result of fuel storage tank leakage on or near the site. No clean-up plan has been implemented by the United States Air Force and the construction of this Plant on this site will inhibit or prevent clean-up of this serious environmental damage.
- B. The project cannot be certified at this time because if applicant continues to propose wet cooling:
  - 1. There is no "Will Serve" letter to contractually provide for a continuous and uninterrupted flow of water to the plant that will make the plant reliable during it's operational lifetime.
  - 2. There is no CEQA analysis of the Cumulative and or Growth Inducing Impacts associated with the over sizing of the pipelines and the water treatment facilities which will be used for "other" purposes than the water needs of HDPP for wet cooling.
  - 3. Applicant cannot be afforded a contractual right outside the operation of "Adjudication: wherein all local water producers are mandated to "cure" the critical and severe overdraft in the basin by purchasing two-acre feet of water for each acre-foot consumed.

4. The evidence in the case demonstrates that MWA may not have enough water to cure the overdraft with its current entitlements. Thus, even with a contract to provide water for project wet cooling, the contract water cannot be supplied if no SWP is available.
5. The ability of HDPP to use SWP water for 100% consumptive use is contrary to the Physical Solution. If allowed, 100% consumptive use gives HDPP an unfair advantage over all other water producers in the High Desert. The RPMPD favors applicant at a cost to local citizens, taxpayers and water producers, and;
6. The use of State Project Water is a Property right of the citizens who paid for it, for 100% consumptive use in a critical and severely overdrafted water basin is contrary to Article X Section 2 of the California Constitution.

**VII. INTERVENOR'S REQUESTED COMMENTS - REVISIONS FOR INSERTION TO RPMPD:**

The Energy Commission approach is to allow the development of the HDPP, with a set of mitigation "Conditions", The RPMPD alleges the conditions will mitigate the "Power Project" to a level of non-significance, because simply put, the "Power Project", will not of itself cause a "worsening" of the overdraft, because it will use State Project Water for its operation. Intervenor respectfully disagrees with this conclusion and requests revisions to the RPMPD Comments and Conditions to accurately reflect his position(s).

**Comment One: Soil and Water**

**Water Resources [beginning on page 208]**

**Intervenor requests that the RPMPD be revised to present his comments as required by CEQA. Intervenor's comments are in bold and underlined format.**

This was the most highly contested area in these proceedings.. . . Mr. Gary Ledford, strongly disputes the propriety and the impacts of the project's proposed water supply plan. **He does not oppose development of the project, *per se*, but rather basically contends that:**

- 1. Allowing the project to use imported water for its intended consumptive use "...gives HDPP twice the amount of water at a**

reduced rate than other **all other** producers in the Basin and thus creates an inequity." (Ledford's "Brief on Reopened Hearings and Revised Comments", March 7, 2000, p. 20; see also 1/27/00 RT 24.) Several public commentators echo Mr. Ledford's concerns. (See, e.g., 1/27/00 RT 51-56; 2/18/00 RT 78, 90-92.)

- 2. No "Will Serve Letter", providing for a continuous and un-interruptable source of water for the Power Project has been provided.**
- 3. As required by law, a CEQA analysis has not been conducted by the Water Agency[s] that intend to provide water to the project.**
- 4. The Pipelines, Wells and Treatment Facilities planned to serve this project are oversized for the purpose of providing water service to the redevelopment of George Air Force Base has not been studied under CEQA.**
- 5. Article X, Section 2 of the California Constitution prohibits 10% or more of the annual limited water entitlements of the MWA should not be used for 100% consumptive use for evaporative cooling.**

At Page 210 - the RPMPD states that "Full importation of MWA's entitlement to 75,800 acre feet of SWP water would lessen the amount of basin overdraft." That statement is not consistent with the evidence in the record. To properly reflect the record the important information for the decision-makers is as follows:

Full importation of MWA's entitlement to 75,800 acre feet of SWP water would lessen the amount of basin overdraft. **However, staff advises us that on average only 65% of SWP will be available in any one year, or approximately 50,000 acre feet per year. Based on the evidence in this record, 50,000 acre-feet of water will not be enough to cure the regional overdraft.** No SWP water was, however, imported during 1999 due to financial limitations.<sup>31</sup> (EX. 87, p. 5.) This overdraft condition has been characterized as "severe and critical". (10/8/99 RT 139: 5-7.)

At Page 224 -

The evidence in the record establishes (1) There is a severe and critical overdraft; and (2) The entire amount of the MWA entitlement will not cure the overdraft. The conclusion from the RPMPD provided in the following two paragraphs simply do not make common sense. The ground water basin is being "further depleted" by the municipal producer who proposed to furnish water to this project. The evidence clearly

shows that the overdraft will continue to get worse. The HDPP purchasing SWP water that is intended to "Cure" the overdraft will not help this critical situation. Intervenor requests that his comments on this issue be included.

**Finally Overall**, the key concerns in evaluating Applicant's water supply plan are ensuring: 1) that only imported water be used for the project **so that the project not cause the groundwater basin to be further depleted**; and 2) that the water plan be used to supply water for only the HDPP project. **Mr. Ledford disagrees with this contention, because he feels the evidence presented by Staff clearly shows that VVWD is continuing to overdraft the Regional Aquifer, for which there is no recharge. [Ex 87], further that the Water Facilities designed are acknowledged by the Staff to be over designed by 100%, and that no CEQA analysis has been conducted.[Ex. 146A].** It is axiomatic that the water supply agreements previously summarized are required in order to supply project water. **Mr. Ledford's position is that the Plant cannot be certified until a "will serve" letter is provided. However, only one in a proposed series of five contracts has been provided and there is no assurance that the balance of the agreements will be provided? The key "Will Serve" letter has not even been drafted.**

Page 225 - the RPMPD states for the first time, "At the outset, we note that the evidence of record does not establish or credibly suggest that the SWP water discussed during these proceedings will be used for other than project purposes." Clearly the Committee and Intervenor have a different view of the record. Intervenor requests that his comments be incorporated into the RPMPD.

At the outset, we note that the evidence of record does not establish or credibly suggest that the SWP water discussed during these proceedings will be used for other than project purposes. Uncontradicted testimony . . . and nowhere identifies any additional development planned or reasonably expected to occur as a result of the project. (See, e.g., 9/30/99 RT 123-24, 139:19-21, 140-41.) **Mr. Ledford disagrees with our characterization of the record and points our attention in the record we cite as his testimony that the Project is Growth Inducing, each of the above citations in the record refers to Mr. Ledford's Testimony or examination of witnesses.**

**Pg. 123: Ms Stennic: ". . I'd have to refer to the VEDA Plan. . ."**

**Pg: 139: Ledford: ". . the whole idea of the redevelopment of George Air Force Base is to provide for manufacturing facilities to provide jobs and to stimulate growth in the Valley."**

Pg: 140: **Ledford: ". . the means and mechanism to sponser growth is to have water.**

**Mr. Ledford again refers the Committee to Mayor's Caldwell's comments:**

**Consider that this "Project", as designed, the water component of this project is designed to take the water from the state water project, the aqueduct, . . go one step beyond that and through the injection wells that have been proposed and agreed to and;**

**". . .take additional water, treat it and put it into the aquifer, and then from our perspective as those who live here and those who have to make the land use decisions and the environmental decisions, we find this a project without parallel in the context of the private section being willing to invest money in infrastructure that will. . ."**

**"CREATE [sic] A WATER TREATMENT FACILITY THAT WILL ULTIMATELY BECOME AVAILABLE TO THE GENERAL PUBLIC FOR USE AS WE BUILD AND GROW AT GEORGE AIR FORCE BASE AND BEYOND"**

**Terry Caldwell  
Mayor of the City of Victorville  
Chairman of the southern California International Airport Authority  
Vice Chairman of the Victor Valley Economic Development Authority**

**Referring the Committee to the Conditions:**

**SOIL&WATER-17 The project owner shall enter into an Aquifer Storage and Recovery Agreement with the Victor Valley Water District (VVWD). This agreement shall contain the following conditions:1) It shall prohibit VVWD from producing or allowing others to produce water from project wells, except that VVWD may produce water from project wells: (i) for use by the HDPP project pursuant to SOIL&WATER-1 ; and (ii) for purposes other than use by the HDPP project pursuant to SOIL&WATER-1**

Page - 227 Intervenor disagrees with the committee's characterization of the evidence and requests his comments are added to this portion. The evidence cited herein does not provide "design capacity" to meet the projects needs. This committee needs to talk to its "Staff", and listen its staff testimony. The fact is that the "Water Treatment Facility, sets the design standard. Staff's testimony is that the Pipelines and Treatment Facility"

are over designed to meet the plants requirements. This can clearly be seen when reviewing applicant's Report of Waste Discharge. On this plan it shows a 4,000,000 gallon per day "Packaged Treatment Facility", this facility operated 300 days per year is capable of treating 27,000 acre-feet of water per year. Further the RO plant is designed with a 2,000,000 gallon per day capacity. This plant operating 300 days per year will produce 14,000 acre-feet of water per year. [Buell: 146A pg. 3. "Growth Inducing Impacts"]

"Staff agrees with Mr. Ledford that certain aspects of the Agreement could create growth inducing impacts. Staff notes that all of the project's water related facilities are oversized. The Agreement (section 15) allows for VVWD's use of HDPP facilities. VVWD's use of HDPP facilities are potentially growth inducing since this would provide an increased water supply for VVWD, thereby removing an obstacle to growth."

Intervenor requests the following be modified to reflect the evidence:

The evidence supports Mr. Ledford's **position**. Direct, uncontradicted testimony establishes that the design capacity of projects **water related facilities are oversized and not required** to meet project needs. **(Buell Ex 146A)(2/1800 RT 126:19-25 to 127:1-4; see also, Ex.14.)** **While the Projects** needs include "peak", not just "average," water flows in order to transport water both for cooling as well as injection for storage **there is no evidence that the Main Treatment Plant or that the RO process needs to be greater than the design flow.**<sup>54</sup> (2/18/00 RT 117-19.) Moreover, the **testimony of Randy Hill** persuasively establishes that the **VVWD's intent is that the** project's water pipelines will not be interconnected ("looped") with existing or currently planned pipelines (2/18/00 RT 179-83), other than is necessary to allow VVWD to use project wells to supply the project or to offset existing pumping near the Mojave River. (2/18/00 RT 125-26, 179-83.) **Although Mr. Hill acknowledges that once connected that treated water can flow into his system and no one would ever know.**

**FINDINGS and CONCLUSIONS at page 230 Intervenor requests the following changes to the findings.**

Based upon the persuasive weight of the evidence of record, we find and conclude as follows:

Add:

**2. The soils under the Project Site and the Perched Aquifer are seriously contaminated and there is no current plan to cure the contamination prior to HDPP construction.**

**4. The Mojave River Groundwater Basin is critically and severely overdrafted.**

5. The High Desert Power Project will use wet cooling technology, which is a hotly Controverted issue, in this overdrafted basin. Water may not be available for cooling the plant in the future.
6. The use of wet cooling technology requires approximately 3300 to 4000 acre-feet of water annually, plus treated water to be injected into the aquifer for banking of 300 - 4,000 acre-feet per year.
10. The Mojave Water Agency is entitled to approximately 75,000 acre feet per year of State Water Project water of which it is estimated that only approximately 50,000 acre feet will be available to the agency on an annual basis.
13. Use of imported State Water Project water by the High Desert Power Project may negatively affect water levels or supply in the local aquifers, or in the Mojave River, and may create a significant new demand upon the supply of State Water Project Water, and may impair the Mojave Water Agency from addressing the basin's overdraft.
16. The evidence of record directly shows that all of the Proposed Projects Water Pipelines and Water treatment Facilities is fully over designed for the HDPP needs. The future development of George Air Force Base and beyond has been identified to develop in the reasonably foreseeable future as a result of the High Desert Power Project. In addition, the Conditions of Certification adequately ensure that the project's water facilities will not remove an impediment to growth, but are expected to result in growth ~~inducing impacts to spur the economy of this area.~~
- 16.17. The analysis of record did not evaluate storage of water for withdrawal and non-project use by the Victor Valley Water District, and no party or agency may use the PMPD or the Energy Commission certification of the HDPP for any use of water other uses directly for the HDPP.
18. Before Victor Valley Water District, the MWA, the City of Victorville, The Victor Valley Economic Development Agency or any other agency may use the project's water treatment facility for any non-project withdrawal and use, it must first obtain a separate water storage agreement from the Mojave Water Agency.
20. The evaluation of record **did not include** an examination of alternate sources of water supply for the project. [No place in the record did the CEC study the possibility of purchasing FPA - the legal "Property Rights" of the farming community, in conformance with the terms of the judgment - for use in this project.]



2021. Impacts associated with the importation of State Water Project water by the Mojave Water Agency for HDPP have not been examined in environmental documentation certified by that agency.

22. The **Committee believes that the** Conditions of Certification below ensure that the High Desert Power Project will comply with all applicable laws, ordinances, regulations, and standards mentioned in the appropriate portion of Appendix A of this Decision.

**Comment Two: CONDITIONS of CERTIFICATION beginning at page 240**

While it appears to this Intervenor that for all of its Public Participation, there appears to be at least a glimmer that Staff and the Committee are only now beginning to have an understanding of the issue of water. Previously there were no teeth, no means of enforcement, even the small amount of control that was in the August 16<sup>th</sup> conditions did not exist.

It is apparent that ultimately this project will be approved, let the record be clear that although this Intervenor does not object to the construction of a Power Plant, he does object to the use of water 100% consumptively wherein there is no benefit to the Basin. All other producers of water are mandated to purchase water on the basis on 50% consumptive use. This

Intervenor requests that any condition that requires the notification of CDFG, also add the requirement of the same **Notice to this Intervenor.**

**Comment Three: DRY and HYBRID COOLING**

Intervenor takes the position that Dry Cooling as the evidence has shown is the environmentally preferred method of providing cooling for the HDPP. Preserving our valuable water resources for the use and reuse to its highest, best and most beneficial uses should be the highest priority. In fact, Dry Cooling should be required for all future project in the state of California.

Intervenor argues that the Energy Commission is compelled to condition this project to use Dry Cooling as a matter of Law. The Energy Commissioners are the conscious of the Public at large in this great State, and whether they may think that is it OK to allow a market driven economy to take the risk of whether or not Wet Cooling will work or not, is not the issue of Law.

Intervenor, requests that the following redlined comments be added to the Presiding Members Proposed Decision.

Overall, the testimony establishes that the Applicant proposes to use water cooling since it is the most efficient and least cost option. From an efficiency and reliability perspective, the higher parasitic loads associated with the use of dry or hybrid cooling would decrease the power plant's power output and its efficiency -- the former in the range of about 10 percent (70 MW) during summer months **only when the temperatures exceed 97 degrees** and the latter in the



range of 2 to 3 percent. (9/16/99 RT 114, 116, 174-75; 10/8/99 RT 163; 2/18/00 RT 59-60; Exs. 85, 143.) The efficiency of a dry cooling system decreases with an increase in ambient temperature. The use of dry cooling would also reduce plant availability during hot weather because of operational factors and low humidity generally encountered at the project site. (2/18/00 RT 60-61; Ex. 85.) Given these and other factors, Applicant's witness stated that using dry cooling would reduce expected economic returns to the point "...where it [the HDPP] would not offer enough of a payback to make this investment worth the risk." (2/18/00 RT 58: 12-18; see also, Ex. 143, p. 2.) **The witness however could not quantify the amount of money lost or even the number of hours or days when he expected the plant would operate at the reduced capacity.**

The testimony of record supports the foregoing characterizations. In addition, the evidence further establishes that the use of dry cooling **exclusively will** reduce the amount of PM10 emissions **from the cooling tower to zero**. (Ex. 85, p. 9.) This would reduce the amount of PM10 offsets required, (10/7/99 RT 55.) although Wet/dry cooling would result in a higher level of **PM10** air emissions, **the Wet/Dry Process would produce substantially less PM10 but may create** the potential for exceeding the 24-hour PM10 standard at the property line. (10/7/99 RT 52-53.) The evidence further indicates that **,if HDPP desired to overcome the capacity loss it would require** additional fuel usage, due to lower plant efficiency from dry or hybrid cooling, would likely require obtaining more offsets for increased air emissions. (Ex. 85, p. 9.) These potential impacts are avoided by the use of wet cooling.

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**STATE OF CALIFORNIA**

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	PROOF OF SERVICE
For the High Desert Power Project [HDPP]	)	
_____	)	

I Kathie Mergal declare that on \_\_\_\_\_, I deposited copies of the attached **Comments on Revised Presiding Members Proposed Decision**, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

Signed original document plus 11 copies to the following address:

California Energy Commission  
Docket Unit  
1516 Ninth Street, MS 4  
Sacramento, CA 95814

In addition to the documents sent to the Commission Docket Unit, individual copies of all documents were sent to:

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### **Interested Organizations**

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I declare under penalty of perjury that the foregoing is a true and correct.

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Kathie Mergal